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9
10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 MARTIN S. ROOD, an individual,

13 Plaintiff,

14 v.

15 ARTHUR F. NELSON, an individual; DON
16 FOSTER SCROGGINS, an individual; JACK
17 P. GILLESPIE, an individual; APPRAISERS
18 OF LAS VEGAS, a Nevada corporation;
19 DOES 1 through 5, and ROE
20 CORPORATIONS 1 through 5,

21 Defendants.

Case No.: 2:12-cv-00893-LRH-RJJ

**MOTION TO EXTEND TIME TO
SERVE SUMMONS AND
COMPLAINT ON DON FOSTER
SCOGGINS AND ARTHUR F
NELSON**

22 Plaintiff Martin S. Rood through his counsel the Law Office of Robert Spear moves this
23 Court for an extension of time in which to serve Defendants Arthur F. Nelson and Don Foster
24 Scoggins. Plaintiff requests an additional ninety (90) days in addition to the one hundred
25 twenty days provided by Fed. R. of Civ. Proc. 4(m), or until December 21, 2012, to serve
26 Defendants Don Foster Scoggins and Arthur F. Nelson. Plaintiff moves this Court pursuant to
27 Federal Rule of Civil Procedure 4(m) based upon the facts set forth in the points and authorities

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1 below, the pleadings and papers on file herein, and based upon any arguments of counsel that
2 this Court may choose to entertain should this Court wish to set this motion for hearing.

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4 Dated this 28th day of August, 2012.

5
6 /s/ E. Robert Spear
7 E. Robert Spear (8672)
8 LAW OFFICE OF ROBERT SPEAR
9 3654 North Rancho Drive
10 Las Vegas, Nevada 89130
11 *Attorneys for Plaintiff*
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1 **POINTS AND AUTHORITIES**

2 **1. FACTUAL BACKGROUND.**

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4 Plaintiff Martin S. Rood filed his complaint in this action on May 25, 2012. Since that
5 date, Plaintiff has attempted to serve each of the Defendants in this action. To date,
6 undersigned counsel has through various means obtained service of the summons and
7 complaint on Defendant Jack P. Gillespie and on Defendant Appraisers of Las Vegas (by means
8 of service through the Nevada Secretary of State Office).

9
10 Plaintiff has sought to serve the summons and complaint on Defendants Arthur F.
11 Nelson and Don Foster Scoggins, but has not as yet obtained service on these individuals.
12 Plaintiff's undersigned counsel has searched for these individuals by searching through the
13 Nevada Secretary of State's office records, by searching through the Nevada Real Estate
14 Division records and by contacting the Division, by contacting the Appraisal Institute's local
15 chapter president, by contacting the individual who purchased Mr. Scoggins business
16 operations, by contacting Mr. Scoggins' insurance carrier (which has denied Mr. Scoggins is
17 insured despite Plaintiff's possession of Mr. Scoggins' insurance declaration page), by asking
18 Mr. Gillespie through counsel if he has knowledge of his co-defendants' current locations, and
19 by conducting various searches including skip traces using online services through Lexis.com.
20
21 As to Defendant Don Foster Scoggins, Plaintiff has sought for Mr. Scoggins in various
22 locations, including in Las Vegas, Nevada. Plaintiff has even heard that Mr. Scoggins may
23 have been in Africa serving a mission for his church. Plaintiff believes he may have found
24 Defendant Don Foster Scoggins in Atlanta, Georgia and has sent the summons and complaint
25 out for service to that location. Plaintiff has also learned that Mr. Scoggins may have used or
26 may currently be using one or more different names.

1 Plaintiff has also sought for the location of Arthur F. Nelson in Las Vegas, Nevada and
2 other locations and believes he may have found Mr. Nelson in Newport Beach, California.
3 However, Plaintiff has also recently learned that Mr. Nelson may have passed away since the
4 events underlying the complaint took place.
5

6 The date for service of process has not yet passed. One hundred twenty days from the
7 date of filing the complaint is September 22, 2012.

8 **2. LEGAL ARGUMENTS.**

9 Federal Rule of Civil Procedure 4(m) governs extensions of time for service of the
10 summons and complaint in a case. This rule states in pertinent part as follows:
11

12 (m) Time Limit for Service. If a defendant is not served within 120
13 days after the complaint is filed, the court--on motion or on its own
14 after notice to the plaintiff--must dismiss the action without
15 prejudice against that defendant or order that service be made
16 within a specified time. But if the plaintiff shows good cause for
the failure, the court must extend the time for service for an
appropriate period....¹

17 “When entertaining a motion to extend time for service, the district court must proceed
18 in the following manner. First, the district court should determine whether good cause exists
19 for an extension of time. If good cause is present, the district court must extend time for service
20 and the inquiry is ended.”²
21

22 Here, Plaintiff believes he has shown good cause for his failure to serve Defendants Don
23 Foster Scoggins and Arthur F. Nelson. Plaintiff and undersigned counsel have diligently sought
24 to find these two individuals as described in this motion. Despite these efforts, Plaintiff has yet
25

26
27 ¹See Fed. R. of Civ. Proc. 4(m).

28 ²See *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1305 (3d Cir. Pa. 1995).

1 to serve these two Defendants. Even though the date for service of the summons and complaint
 2 will not pass until September 22, 2012, Plaintiff has filed this motion out of an abundance of
 3 caution in light of the difficulty Plaintiff has had locating these individuals. Plaintiff may also
 4 need time to substitute a new Defendant into this action, the estate of Mr. Nelson, prior to
 5 proceeding. Accordingly, Plaintiff requests an additional ninety (90) days in addition to the one
 6 hundred twenty days provided by Fed. R. of Civ. Proc. 4(m), or until December 21, 2012.

8 **3. CONCLUSION.**

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 10 Based upon the foregoing, Plaintiff requests an additional ninety (90) days in addition to
 11 the one hundred twenty days provided by Fed. R. of Civ. Proc. 4(m), or until December 21,
 12 2012, to serve Defendants Don Foster Scoggins and Arthur F. Nelson.

13 Dated this 28th day of August, 2012.

16 /s/ E. Robert Spear
 E. Robert Spear (8672)
 LAW OFFICE OF ROBERT SPEAR
 3654 North Rancho Drive
 Las Vegas, Nevada 89130

19 *Attorneys for Plaintiff Martin S. Rood*

24 **IT IS SO ORDERED.**

25 
 26 **UNITED STATES MAGISTRATE JUDGE**
 27 **DATED:** August 29, 2012

CERTIFICATE OF SERVICE

Pursuant to FRCP, I certify that I am an employee of LAW OFFICE OF ROBERT SPEAR, and that on this 28th day of August, 2012, I caused the above and foregoing document entitled: **MOTION TO EXTEND TIME TO SERVE SUMMONS AND COMPLAINT ON DON FOSTER SCOGGINS AND ARTHUR F NELSON** to be served as follows:

☒ [X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ [] by facsimile transmission to the facsimile number(s) shown below and in the confirmation sheet filed herewith; and/or

☐ [] to be hand-delivered; to the attorneys listed below at the address and/or facsimile number indicated below:

S. Don Bennion, Jr., Esq.
DURHAM JONES & PINEGAR, PC
10785 W. Twain Avenue, Suite 200
Las Vegas, NV 89135

Attorneys for Defendant Jack P. Gillespie

/s/ Sean A. Waugh
An employee of Law Office of Robert Spear